



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/622,011

07/16/2003

Julie D. Saba

200116.405C1

1654

500

7590

09/14/2007

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 5400
SEATTLE, WA 98104

EXAMINER

CHOWDHURY, IQBAL HOSSAIN

ART UNIT

PAPER NUMBER

1652

MAIL DATE

DELIVERY MODE

09/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/622,011

Applicant(s)

SABA, JULIE D.

Examiner

Iqbal H. Chowdhury, Ph.D.

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 12, 16, 20 and 27.
Claim(s) rejected: 12-14, 16, 19-23, 26, 27, 30 and 31.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: Continuation of 3. NOTE: The proposed amendments are filed after the prosecution closed i.e. after FINAL Rejection. Amending the claims in this manner at this stage of examination by adding new limitations i.e. sequences of SEQ ID NOs: 19, 20, 21, 28 or 29, which requires the examiner to perform a new search for SEQ ID NOs: 19, 20, 21, 28 or 29 that were not searched earlier and address at issues that arise after analyzing said search results. Applicants failed to amend the claims as in the instant amendment before the final rejection was mailed. Therefore, the amendment filed on 8/13/2007 has not been entered.

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: Previous rejection of Claims 12-14, 16, 20-22, 26-27, 30-31 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is maintained. This rejection has been described at length in previous Office Actions. Applicants argue a lot, however, arguments are moot in view of the non-entry of the amendments.

Previous rejection of claims 12-14, 16, 20-22, 26-27, 30 under 35 U.S.C. § 112, first paragraph, as failing to comply with enablement requirement, is maintained. This rejection has been described at length in previous Office Actions. Applicants argue a lot, however, the arguments are moot in view of non-entry of the amendments.

Previous rejection of Claims 12-14, 16, 19-23, 26-27, 30-31 under 35 U.S.C. 103(a) as being unpatentable over Lanterman et al. (1998), Kim et al. (2000) and in view of Melendez et al. (2000) is maintained. This rejection has been described at length in previous Office Actions. Applicants argue a lot, however, the arguments are moot in view of non-entry of the amendments.

Rebecca E. Procuty
REBECCA E. PRO CUTY
PRIMARY EXAMINER
GROUP 1800
1670